No. 05-839

# In The Supreme Court of the United States

**DIANNE B. PROFFITT,**
*Petitioner,*

v.

**METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE; JULIE WILLIAMS, DR.; PEDRO GARCIA, DR.; GENE HUGHES, DR.,**
*Respondents.*

**On Petition For A Writ Of Certiorari To The United States Court of Appeals For The Sixth Circuit**

## PETITION FOR A WRIT OF CERTIORARI
with Appendix

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## QUESTION PRESENTED FOR REVIEW

Petitioner would state that the Sixth Circuit is in the minority of circuits which requires a separate and distinct knowledge prong in setting forth a *prima facie* case of retaliation under Title VII while many of the remaining circuits consider knowledge, along with other elements, in determining whether or not a causal connection has been established and several circuits allow a causal connection to be established solely upon temporal proximity. Where it is undisputable that the employer as an entity had knowledge that the Petitioner engaged in protected activity, should the Petitioner's claim be barred because the Petitioner has limited evidence to overcome one of the retaliator's "bald assertion" that the retaliator had no knowledge of the Petitioner's exercise of protected activity despite a temporal proximity of four days between the exercise of the protected activity and the elimination of the Petitioner's position.

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## OPINIONS BELOW

The September 29, 2005, decision of the Court of Appeals, which is unreported, is reprinted in the Appendix to the petition. (App. A). The September 29, 2004, decision of the District Court, (Middle District of Tenn.), which is not officially reported, is reprinted in the Appendix to the petition. (App. B).

## STATEMENT OF JURISDICTION

The decision of the Court of Appeals was entered on September 29, 2005. A timely Petition for Writ Of Certiorari was filed on December 2005. This Court has jurisdiction pursuant to 28 U.S.C. §1254(1) to review the decision of the Sixth Circuit Court of Appeals on a writ of certiorari.

## STATUTES INVOLVED

42 U.S.C. §2000(e)-3

(a) Discrimination for making charges, testifying, assisting, or participating in enforcement proceedings.

It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

## STATEMENT OF THE CASE

Petitioner was employed for 27 years by the Respondent, The Metropolitan Board of Education, first as a teacher and then promoted to a principal. In June 2000, Petitioner retired and began to work part-time for the Respondent as an Employee Relations Specialist. (Proffitt Aff. ¶ 1; App. H1-H2).

In the fall of 2001, Dr. Garcia became the new Director of Schools. His administration hired Gene Hughes as the Employee Relations Director on August 23, 2001. (Ex.14; App. K). Gene Hughes was then responsible for

investigations of complaints of discrimination. (Williams Depo. p. 11; App. Q2). Hughes became Petitioner's direct supervisor. (Proffitt Aff. ¶ 3,; App. H3). Hughes had a history of extensive violations of the discrimination laws, evidenced by having been charged with sexual harassment of several co-workers in Florida and having his teaching certificate revoked in the state of Florida as a result of sexual harassment. This revocation took place after he was already at Metro in June 2002. (Ex. 2; App. D). In fact, Hughes also sexually harassed the Petitioner after arriving to work at Metro. (Proffitt Aff. ¶ 14; App. H6).

In the spring of 2002, Dr. Garcia hired Dr. Williams to be the new head of the Human Resources Department. Dr. Williams began employment on June 3, 2002. Dr. Williams asked all of the employees under her to fill out a form providing her with a job description of what they did, and asked the employees to return the form back to her. (Proffitt Aff. ¶ 6-7; App. H4).

The week of June 3, 2002, Petitioner filled out this form and took the form to Gene Hughes. Petitioner asked Mr. Hughes if there was anything else that he thought she should put on the form and was told, "No that's fine, everything looks good". Petitioner returned the form to Dr. Williams. Dr. Williams told Petitioner at that time that she had put Petitioner in the next year's budget for 2-3 days per week.

(Proffitt Aff. ¶ 8; App. H4). In accordance with this, the 2002-2003 fiscal year organization plan dated June 10, 2002 indicates that Petitioner would have her part-time consultant position in the employment relations department at Grade 15 working for 24 hours per week at the same salary. (Ex.22; App. L).

One week before June 12, 2002, another employee, Ms. Sadler, had a conversation with Jennifer Bozeman, an in house attorney for the employer, Metro, about a pending lawsuit. Ms. Bozeman informed Ms. Sadler that she did not think Hughes was truthful and that all conversations with him were done through e-mail so that she would have a record of what was said. Ms. Bozeman also alluded to the fact that Hughes had acted inappropriately with her. Ms. Sadler at that point told Ms. Bozeman that two other employees had said the same to her. (Sadler Aff. ¶ 4; App. G2). Petitioner had previously informed Sadler about Hughes sexual harassment of her. (Sadler Depo. p.35; App. J2).

Ms. Bozeman then contacted Mike Safley, another in house Metro attorney, and informed him of this conversation with Ms. Sadler. Dr. Garcia was also contacted, and she discussed the retaliation issue with him in a follow-up conversation. (Bozeman Depo. p. 35, 40, 56; App. N4, N5, N6). The Metropolitan Government then assigned Veronica Frazier, the Assistant Director of Human Resources for the

Metropolitan Government, to investigate the case. (Frazier Depo. p. 5, App. O2).

Ms. Frazier is responsible for investigating complaints of discrimination at Metro. She follows a set procedure in conducting her investigations. (Frazier Depo. p. 6; App. O3). Ms. Frazier will inform the employees that retaliation is illegal "absolutely, every single time". Ms. Frazier lets management in that department know, whether it be the department head, the division manager, or supervisor that they cannot retaliate. She lets the department head know that he is supposed to pass this information on to the supervisors so there can be no retaliation. Then the department head would tell the alleged harasser that they could not engage in retaliation. This is done from the beginning of the investigation. She agreed that it is a fair statement that then the supervisor and the alleged harasser know the individuals who have made the complaint and that they cannot retaliate against these individuals. (Frazier Depo. p. 12-13; App. O4-O5). Frazier met with Garcia, Hughes, Safley and Bozeman and gave an outline of how the investigation would proceed. (Bozeman Depo. p. 65; App. N7). In this meeting she gave her comments and observations about retaliatory actions. (Frazier Depo. p. 25; App. O6). In this initial conversation, Sadler, Proffitt and some other employees in HR appeared to have been mentioned and Veronica Frazier informed Garcia that "it may feel like these folks are holding your workplace